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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,616	10/14/2003	Joyce Fernandez		1835

7590
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01/22/2007

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/683,616

Applicant(s)

FERNANDEZ, JOYCE

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Action is made **Non-Final** in view of the decision made on 8/23/06 for the petition filed 5/30/06. This action is based on Applicant's amendments filed 4/7/06.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 5, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites that the piece of fabric is "of a width throughout its length to cover completely a child's buttocks and support the child comfortably..." This limitation renders the width of the fabric unclear and indefinite because children's' buttocks can be of any number of varying sizes and cannot be definitively defined as a whole.

Claim 6 recites the limitation "the middle of the sling" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. The sling can be considered to have two middles, depending on which axis or dimension you are viewing the sling from and it is therefore unclear which middle Applicant is intended the limitations of the claim to encompass.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-7, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Powell (US 5,950,887 A).

Regarding claim 1, Powell discloses a child's support including a sling of an elongated piece of fabric (col. 4 line 43) of a width throughout its length and having a channel (3) between its ends for passing a branch of the sling there through. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and supports the child comfortably (see Figure 1). There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 5, the sling of Powell includes a pocket (col. 5 line 38). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the pocket being used to store child-care things. There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 6, the channel (3) of Powell is near the middle of the sling and extends cross-wise of the sling. The remaining limitations of the claim have already been shown to be unpatentable over Powell as applied to claims 1 and 5 above.

Regarding claim 7, the sling of Powell has all of the claimed features as set forth above. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the sling being looped over a user's head such that the channel is in the middle of a would-be-carrier's back. There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 15, the sling of Powell has all of the claimed features as set forth above. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Powell which is capable of being used in the intended manner, i.e., the sling being draped over a user's shoulder in such a way that the channel would be on top of the user's shoulder. There is no structure in Powell that would prohibit such functional intended use (see MPEP 2111). See Figure 1 of Powell.

Regarding claim 16, Figure 1 of Powell shows a first branch of the sling being passed across the front of the carrier and around and up the back of the carrier and through the channel on the shoulder of the carrier, effectively satisfying the limitations of the claim.

5. Claims 1, 5, 6, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hathaway (US 4,139,131 A).

Regarding claim 1, Hathaway discloses a child's support including a sling of an elongated piece of fabric (col. 2 line 15) of a width throughout its length and having a channel (40) between its ends for passing a branch of the sling there through. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and supports the child comfortably (70, Figure 1). There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 5, the sling of Hathaway includes a pocket (col. 4 line 20). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used in the intended manner, i.e., the pocket being used to store child-care things. There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 6, the channel (40) of Hathaway is near the middle of the sling and extends cross-wise of the sling. The remaining limitations of the claim have already been shown to be unpatentable over Hathaway as applied to claims 1 and 5 above.

Regarding claim 15, the sling of Hathaway has all of the claimed features as set forth above. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Hathaway which is capable of being used

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in the intended manner, i.e., the piece fabric being used in such a way that its width covers completely a child's buttocks and shoulders and supports the child comfortably and the sling being draped over a user's shoulder in such a way that the channel would be on top of the user's shoulder when the sling is draped there over. There is no structure in Hathaway that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 16, Figure 1 of Hathaway shows a first branch of the sling being passed across the front of the carrier and around and up the back of the carrier and through the channel on the shoulder of the carrier, effectively satisfying the limitations of the claim.

Regarding claim 17, the other branch of Hathaway is shown in Figure 1 to pass around the back and to and across the front of the carrier and up to and through the channel and tied in a knot with the first branch.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5, 6, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway as applied in paragraph 5 above in view of Cummings et al. (US 6,595,396 B2).

Hathaway discloses the claimed sling, however, it can be argued that the width of the sling along its entire length is not of sufficient width to cover completely a child's buttocks and shoulders. Cummings et al., however, also discloses a child sling similar to the sling of Hathaway in that both sling have a central portion (16 and 22, respectively) from which two branches project (12/14 and 70, respectively). The branches (12/14) of the Cummings et al. sling are noticeably wider than those (70) of Hathaway. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the branches of the Hathaway sling wider, as taught by Cummings et al., as wider straps would spread the pressure applied to the user's shoulder over a greater width or area and make the sling more comfortable for the user to wear. Narrower straps would be more likely to press harshly into a user's shoulders, possibly causing uncomfortable indentations in the user's shoulders or leaving marks.

8. Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hathaway as applied in paragraph 5 above or Hathaway in view of Cummings et al. as applied in paragraph 7 above, either in view of Cordisco (US 5,071,047 A).

Regarding claims 7-10, the original Hathaway sling and the modified Hathaway sling each include the claimed structural features as set forth in paragraphs 5 and 7 above, but neither include the sling being worn on a carrier's back.

Cordisco, however, also discloses a child sling, and teaches that while the sling is mounted on the front of a carrier (Figure 11), the same sling can also be worn on the same carrier's back (Figure 12) without having to modify the structure of the sling. It would have been obvious to one having ordinary skill in the art at the time the invention

was made to wear either of the original Hathaway sling or the modified Hathaway sling not only on their front side, but also their backside, as taught by Cordisco, in order to support the child in a different manner, perhaps more comfortable to the carrier.

Regarding claims 11 and 12, the knot of either Hathaway sling is capable of being loosely tied or tightly tied, as any knot can be, effectively satisfying the limitations of the claim. The claim is part of a series of product claims that claim the structure of a child sling after it has been mounted on a user. The manner in which the knot is formed does not take away from or define over the fact that in the end, a knot is formed in either of the Hathaway slings.

Regarding claims 13 and 14, the pocket (37) of either Hathaway sling is in a branch of the sling that would not be directly entangled in a knot formed therein, and is thus considered by Examiner to be beyond the knot, effectively satisfying the limitations of the claim. Regarding the pocket being used to hold child-care things, the initial statement of intended use and all other functional implications of the pocket have been carefully considered but are deemed not to impose any patentably distinguishing structure over the pockets of either Hathaway sling which are capable of being used in the intended manner, i.e., to hold child-care things. There is no structure in either Hathaway sling pocket that would prohibit such functional intended use (see MPEP 2111).

Response to Arguments

9. Applicant's arguments filed 4/7/06 have been fully considered but they are not persuasive.

Applicant has asserted that Hathaway's sling is not of a width throughout its length to cover completely a child's buttocks and shoulders. Examiner directs Applicant's attention to Figure 1 of Hathaway. Examiner is of the position that this Figure clearly shows the sling (portion 70) extending completely over or covering completely the buttocks of the child being held therein. The width of this portion (70) is found throughout the length of the sling as seen in Figure 3.

Applicant has also asserted that claim 15 already imposed a patentably distinguishing structure over that disclosed by Hathaway by reciting structure such as "being draped over a user's shoulder so that the channel rests on the shoulder." Examiner fails to find this quoted language in any of the claims. Claim 15 recites specific structure of a child sling, namely that comprises a piece of fabric, has a certain width, and has a channel. The claim further states that the channel will be "on top of the would-be-carrier's shoulder when the sling is draped there over." Examiner places emphasis on "would-be-carrier" and "when". "Would-be-carrier" is evidence that the claim is not reciting structure to a sling already on a person. Also, "when" implies at a time when the sling is draped over a user's shoulder, if it were to happen. A user could certainly drape the sling of Hathaway over their shoulder in such a manner that the channel of the sling lay on top of their shoulder. Even if in this position the sling is not ideally situated for holding a child, although Examiner does not concede the fact that it isn't, the language of the claims as currently presented is still satisfied.

Finally, Applicant has asserted that the limitations regarding the knot being first tied loosely and then tied tightly add further patentability to the claims. Examiner

maintains the position that the Hathaway sling, when in use, includes a knot. The manner in which this knot is formed does not take away from or define over the simple fact that a structurally equivalent knot exists. Examiner feels that this issue is similar to the issue's raised in product-by-process claims. The MPEP states:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
1/9/07


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SUPERVISORY PATENT EXAMINER